

Remarks

I have carefully reviewed the Office Action of January 5, 2006 of Examiner Underwood. This Amendment satisfies all the Examiner's rejections and/or objections and places this application into condition for allowance.

Power of Attorney/Terminal Disclaimer Issue

A document entitled Establishment of Assignee's Rights under 37 CFR 3.73 and Power of Attorney from Assignee is enclosed herewith. This document grants me a Power of Attorney in this application. I have signed and enclosed a terminal disclaimer which must be accepted by the Examiner. Accordingly, any claims rejected solely on double patenting grounds must now be allowed.

Claim 2

Claim 6 was rejected solely on double patenting grounds. Claim 2 has been amended to be an independent version of claim 6. Accordingly, in view of the new terminal disclaimer enclosed herewith, the only rejection applicable to amended claim 2, i.e. that of double patenting, must be withdrawn. Claim 2 and its dependent claims 3-5 are now allowable.

Claim 1

Rayner is a ride on loader having a platform at the rear of the frame for carrying a standing operator. While standing on the platform, the operator can reach and manipulate certain controls. In Rayner, these controls are located at the apex

of the triangularly shaped body of the loader **substantially forwardly of the rear of the frame.**

It has always been the Applicant's position that Rayner could not be operated as claimed by someone who was attempting to walk behind the loader. Such a person would have to step down off the platform and then stand behind the platform while attempting to reach the controls located at the apex of the loader body. By taking the operator off the platform, this places the operator at least a foot or more to the rear as well as a foot or more lower down. There is no way that a person could still reach the controls with bent arms. The operator would have to stretch out his or her arms to the limit if the controls could be reached at all.

The Examiner notes that a tall person could potentially walk behind Rayner and is apparently postulating that such a person might be able to operate Rayner with bent arms. Perhaps there would be a few people in the world tall enough to do this. But, it is clear **for any person of average height**, such a person could not walk behind Rayner and operate the controls in a bent arm posture.

Claim 1 has been amended so that the bent arm posture limitation must be achieved by a standing operator of average height. Such an average height operator is depicted in Fig. 1 given the proportions of the operator relative to the proportions of the machine. The Examiner's reasoning as to a tall person can NOT even theoretically apply to the average height limitation of amended claim 1.

Morrison does not teach taking a stand on implement and converting it into a walk behind implement by removing the operator supports. There are no such removable operator supports shown anywhere in Morrison. What Morrison does teach is **two entirely different implements, one designed for stand on operation and one designed for walk behind operation.**

Looking at the walk behind machine in Fig. 1, Morrison teaches steering the machine using a pair of rearwardly extending control handles 55 and 56 that extend rearwardly past the rear 38 of the frame. In addition, Morrison controls the operation of the drive wheels using a hand control 104 located beneath the rearwardly extending left handle 55. This control system positions the operator far behind the rear 38 of the frame. Note the large gap in Fig. 1 of Morrison between the operator and the rear 38 of the machine.

One skilled in the art would NOT remove the operator supports from Rayner as Morrison does NOT teach converting one machine from one mode of operation to another simply by removing operator supports. Thus, the Examiner's stated reasons for combining Rayner and Morrison do not apply.

Moreover, even if one skilled in the art attempted to modify Rayner in view of Morrison, then the rearwardly extending controls in Morrison would deter him from doing so. Morrison's controls put the operator too far rearwardly. Claim 1 has been amended to now require that:

"a control system positioned at the rear of the frame without extending rearwardly beyond the rear of the frame..." and

"wherein the control system is located sufficiently close to the rear of the frame and the rear of the frame is configured to permit the average height standing operator walking to walk substantially immediately behind the rear of the frame but to comfortably reach forwardly over the rear of the frame and operate the control system with the operator's arms being bent at the elbow."

Morrison's controls 55, 56 and 104 are NOT "positioned at the rear of the frame without extending rearwardly beyond the rear of the frame". Morrison's controls 55, 56 and 104 are specifically designed to extend past the rear of the frame to allow the handles 55, 56 to steer the machine. See

Col. 3 of Morrison, Lines 25-29. Thus, in the walk behind machine, if the handles did not extend rearwardly, the operator would not be able to steer.

In addition, the walk behind machine in Morrison is NOT "configured to permit the average height standing operator to walk substantially immediately behind the rear of the frame." Morrison's operator is clearly spaced away from the rear of the frame by the length of handles 55, 56. Similarly, Morrison's operator does NOT "reach forwardly over the rear of the frame" to get to and grip the controls. Morrison's operator only grips the handles 55, 56 which are rearwardly of the rear 38 of Morrison's frame.

Clearly, claim 1 as amended defines over any possible redesign of Rayner that might be suggested by Morrison. Accordingly, claim 1 should be allowed on this basis alone.

Moreover, claim 1 calls for "an open space between the loader arms providing substantially unobstructed viewing towards the front in elevated positions of the loader arms when the open space is raised in front of an operator's face". Rayner does NOT have such an open space. The hydraulic actuator for the bucket is mounted to a pair of arms. These arms run right through the middle of the space between the loader arms. Accordingly, claim 1 is further allowable because of the open space limitation set forth in the claim.

Parent Application Prior Art

An Examiner is required to review and consider the prior art cited in the parent applications to this CIP patent application. **See Section 609.02 of the MPEP.**

The Examiner has indicated the parent file could not be retrieved and that the Japanese patent and the non-patent

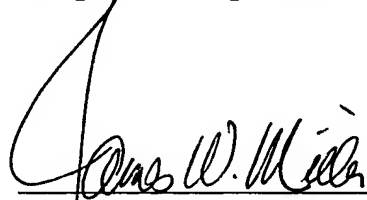
literature (NPL) from the parent case would have to be resubmitted for the Examiner to consider it. Accordingly, I have resubmitted the Japanese patent and the NPL by providing copies of the references in conjunction with the enclosed Forms PTO/SB/08A and 08B. This removes the Examiner's stated reasons for not considering this art. The Examiner is now required to consider it.

There is not believed to be any fees due for the consideration of such prior art as the Examiner was obliged to consider the art prior to the first Office Action. It is not the Applicant's fault that the parent file could not be retrieved from the PTO warehouse. However, if fees are now applicable to the consideration of this prior art, then such fees should be charged to the assignee's Deposit Account 20-1315.

Summary

All of the claims currently pending in this application are allowable. It is respectfully requested that this application be allowed and sent to issue.

Respectfully submitted,



July 5, 2006

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